

Child Welfare Policy Manual

2. CAPTA

2.1 CAPTA, Assurances and Requirements

1 Q: Must the policies that are the subject of the CAPTA assurances be embodied in State statutes?

A: There are five assurances in CAPTA that require provisions in State law. Those are: 1) a law for mandatory reporting by individuals required to report child abuse and neglect (section 106(b)(2)(B)(i)); 2) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect (section 106(b)(2)(B)(vii)); 3) upon implementation of provisions, procedures or mechanisms to assure that the State does not require reunification of a surviving child with a parent who has committed certain felonies, that conviction of any one of those felonies constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (section 106(b)(2)(B)(xvii)); 4) authority under State law for the State CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions (section 106(b)(2)(C)(iii)); and 5) authority under State law to permit the State's CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions (section 113(b)).

However, if a State has a law in effect which conflicts with the provisions in any assurance, or the State's statutory definitions of "child abuse and neglect" and "sexual abuse" do not meet the minimum standards in sections 3(2) and 111(4) of CAPTA, it must modify its statute to correspond with the CAPTA requirements.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 12/9/11ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106, 111 and 113

Child Welfare Policy Manual

2 *Q:* Does the Administration on Children, Youth and Families (ACYF) intend to do in-depth reviews of State statutes and policies to determine State eligibility under the CAPTA Amendments of 1996?

A: CAPTA, as amended in the 1996 reauthorization, made a shift from eligibility requirements to submission of a State plan with assurances in the form of certifications by the State's Chief Executive Officer that certain provisions, procedures, or programs are in place in the State. Legislative history confirms that it was Congressional intent to simplify and streamline the administration of CAPTA at the Federal, State and local levels (Congressional Record - House, September 25, 1996, p. H11148). Accordingly, the primary responsibility for review of State statutes and policies rests with the States.

If there are instances in which ACYF is presented with evidence of potential deficiencies (e.g., through the new child and family services program reviews being conducted by the Children's Bureau, or other sources), action will be taken to verify whether a problem actually exists. If a deficiency is verified, the State will be notified in writing and will be required to take corrective action within a specified timeframe. Funds will not be jeopardized unless the State fails to correct the deficiency within the specified timeframe.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)

Child Welfare Policy Manual

2.1A CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information

No questions and answers are available at this time.

2.1A.1 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

1 Q: What are the Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements?

A: In general, CAPTA requires that a State preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and the child's parents or guardians (section 106(b)(2)(B)(viii) of CAPTA). However, CAPTA allows the State to release information to certain individuals and entities.

The State *may* share confidential child abuse and neglect reports and records that are made and maintained in accordance with CAPTA with any of the following:

- Individuals who are the subject of a report (section 106(b)(2)(B)(viii)(I));
- A grand jury or court, when necessary to determine an issue before the court or grand jury (section 106(b)(2)(B)(viii)(V)); and
- Other entities or classes of individuals who are authorized by statute to receive information pursuant to a legitimate State purpose (section 106(b)(2)(B)(viii)(VI)).

In addition, States have the option to allow public access to court proceedings that determine child abuse and neglect cases, so long as the State, at a minimum, can ensure the safety and well-being of the child, parents and families (see the last paragraph of section 106(b)(2) of CAPTA).

The State must provide certain otherwise confidential child abuse and neglect information to the following:

- Any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from

Child Welfare Policy Manual

abuse and neglect (permitted by 106(b)(2)(B)(viii)(II) but required by section 106(b)(2)(B)(ix));

- Child abuse citizen review panels, if such panels are established to comply with section 106(c) of CAPTA (permitted by 106(b)(2)(B)(viii)(III) but required by section 106(c)(5)(A));
- Public disclosure of the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality (required by section 106(b)(2)(B)(x)), in accordance with section 2.1A.4, Q/A #8 of the CWPM; and
- Child fatality review panels. Although disclosure to such panels is merely permissible under the language of section 106(b)(2)(B)(viii)(IV), section 106(b)(2)(B)(x) of CAPTA requires disclosure of findings or information about the case of child abuse or neglect that results in a child fatality or near fatality. Accordingly, disclosure to a child fatality review panel is required.

Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated 9/12/12
ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated 9/12/12

Reference: CAPTA section 106(b)(2)(B) and 106(c)(5)(A)

2 Q: Would legislation that protects the identity of the reporter, but would otherwise open child abuse and neglect reports and records to the public, meet the confidentiality provisions in section 106 (b)(2)(B)(viii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

A: In general, such broad public access to child abuse and neglect reports and records is not consistent with CAPTA. States must preserve the confidentiality of all reports and records in order to protect the rights of the child and the child's parents or guardians, except in certain specified circumstances.

Child Welfare Policy Manual

There are two circumstances in which information contained in child abuse and neglect reports and records, which are typically kept confidential, may be shared with the public. First, a State *must* release findings or information to the public about a case of child abuse or neglect which results in a child's death or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA and in accordance with section 2.1A.4, Q/A #8 of the CWPM. Additionally, a State may open court proceedings that determine child abuse and neglect to the public (see the last paragraph of section 106(b)(2) of CAPTA).

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2) and 106(b)(2)(B)

Child Welfare Policy Manual

3 **Q:** Do States have the authority to release otherwise confidential child abuse and neglect information to researchers for the purpose of child abuse and neglect research?

A: Yes. Consistent with section 106(b)(2)(B)(viii)(II) and (VI) of CAPTA, States have authority to release information to researchers of child abuse and neglect in either of two ways: (1) the CPS agency may contract with a researcher, thereby making the researcher its "agent;" or (2) States may statutorily authorize release of such information to researchers as a legitimate State purpose, since research involving data in CPS records can provide important information that will help government officials plan programs for abused and neglected children and develop future policy directions.

Source: ACYF-NCCAN-PIQ-97-04 (3/4/97); updated 9/27/11ACYF-NCCAN-PIQ-97-04 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(viii)

4 **Q:** The confidentiality provision at section 106(b)(2)(B)(viii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires that States have a State law or operate a statewide program that includes methods to preserve the confidentiality of all child abuse and neglect records and reports and provides for exceptions in certain circumstances. The statutory language states that such records "shall only be made available to" a specified list of persons and entities. Are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (viii)?

A: In general, States are permitted, but not required, to disclose otherwise confidential information to the persons or entities in the enumerated categories in subsections (I)-(VI) under section (viii). However, the disclosure described in subsections (II), (III) and (IV), is required by subsequent provisions in CAPTA. Specifically, subsection (ix) requires disclosure to any Federal, State or local entity, or agent of such entity, that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect, so that disclosure as described under subsection (viii)(II) is mandatory. Likewise, in accordance with section 106(c)(5)(A), the State must provide a citizen review panel with access to information on cases that the panel needs to review if the information is necessary for the panel to carry out its functions. Further, section 106(b)(2)(B)(x) of CAPTA requires States to allow for public disclosure of the findings or information of the case of child abuse or neglect that results in a child fatality or near fatality. Thus, the disclosure described in subsection (viii)(IV) also is required. Otherwise, States are permitted, but not required, to disclose

Child Welfare Policy Manual

information to the persons or entities in the enumerated categories.

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(viii) and (b)(2)(B)(x)

5 Q: Is there a prohibition against redisclosure of confidential child abuse and neglect information?

A: Yes. Authorized recipients of otherwise confidential child protective services (CPS) information are bound by the same confidentiality restrictions as the CPS agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

6 Q: Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106(b)(2)(B)(viii), (ix) and (x) of CAPTA?

A: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under both title IV-E and IV-B (both of which are subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

Child Welfare Policy Manual

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106(b)(2)(B)(ix) to other governmental entities and in section 106(b)(2)(B)(x) in the case of a child fatality or near fatality), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. However, where the CAPTA provision is permissive (such as in sections 106(b)(2)(B)(viii)(I), (V) & (VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12
ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12

Reference: Social Security Act - sections 471 (a)(8) and (c); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50, 45 CFR 1355.21 (a)

Child Welfare Policy Manual

7 **Q:** Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

A: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

Source: ACYF-CB-PI-98-01 (1/7/98); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(c)

8 **Q:** Is it permissible under the Child Abuse Prevention and Treatment Act (CAPTA) for the State to disclose to the public information in the child abuse and neglect record that does not pertain to the case of child abuse and neglect that results in a child fatality or near fatality?

A: No. Except as discussed below, States must preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and family. Consistent with section 106(b)(2)(B)(viii) of CAPTA, reports and records made and maintained pursuant to the purposes of CAPTA shall be made available only to the entities and under the circumstances described in section 106(b)(2)(B)(viii)(I - VI) of CAPTA.

As the question implies, a State must release findings or information to the public about a case of child abuse or neglect which results in a child's fatality or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA in accordance with section 2.1A.4, Q/A #8 of the CWPM. In addition, a State may open court proceedings that determine child abuse and neglect to the public if the safety and well-being of the child, parents and families involved are protected (see the last paragraph of section 106(b)(2) of CAPTA).

Source: updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act section 106(b)(2)

Child Welfare Policy Manual

2.1A.2 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Expungement

1 Q: How will States be able to determine whether a pattern of abuse or neglect exists if unsubstantiated records must be expunged? While the statute allows these records to be kept in casework files, if the files are not maintained in a central location, previous unsubstantiated report(s) may go undetected if a subsequent report comes into another office, or even another worker.

A: The impetus behind the expungement requirement was the concern of Congress that families are negatively and sometimes unjustly affected by maintenance of public records of unsubstantiated allegations of abuse or neglect. However, it was not the intent of Congress to prevent CPS agencies from keeping information on unsubstantiated reports for use in future risk and safety assessments (Senate Report 104-117, dated July 10, 1995, p. 14). While CAPTA requires prompt expungement of records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated, it also allows CPS agencies to retain information on unsubstantiated reports in their casework files.

Since the issue for Congress is disclosure of information regarding cases that are unsubstantiated or unfounded, this requirement should not adversely affect a State's ability to determine possible cumulative harm. For instance, a State could choose to implement a system which would consider an unsubstantiated case "expunged" for any purpose other than investigation of a new report. This should be possible even in States where casework files are computerized.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xii)

Child Welfare Policy Manual

2 Q: How does the CAPTA expungement requirement affect States that have a three-tier system which includes a middle category that indicates a reasonable basis for concern?

A: This requirement relates only to unsubstantiated or unfounded cases and would not affect retention of records for a middle category which indicates that there is reason to suspect that child abuse or neglect has occurred.

Source: ACFY-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11 ACFY-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xii)

2.1A.3 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Open courts

1 Q: Would there be a conflict with the Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements if a State chooses to open proceedings relating to child abuse and neglect to the public?

A: No. The 2003 amendments to CAPTA specifically give States the flexibility to determine State policies with respect to open courts, so long as such policies ensure the safety and well-being of the child, parents and families (last paragraph of section 106(b)(2)). There may be other Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 3/22/06 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 3/22/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2); Titles IV-E and IV-B of the Social Security Act

Child Welfare Policy Manual

- 2 *Q*: Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under CAPTA. Do the confidentiality provisions in CAPTA restrict the information that can be discussed in open court?

(Deleted 04/17/2006)

- 3 *Q*: How widely should the "open courts" provision in the last paragraph of section 106(b)(2) of the Child Abuse Prevention and Treatment Act (CAPTA) be applied considering the "open courts" provision in title IV-E of the Social Security Act?

A: The "open courts" provision in CAPTA applies to court proceedings that determine whether child abuse and neglect has occurred. However, section 471(c) of the Social Security Act permits States to provide the public with access to court proceedings that determine child abuse and neglect, or other court hearings held pursuant to titles IV-B or IV-E. In doing so, States must at a minimum, ensure the safety and well-being of the child, parents and family. Since this later-enacted law allows open courts in a broader range of court proceedings, a State may allow open courts in any of the proceedings authorized by section 471(c) of the Act and not be considered out of compliance with CAPTA.

Finally, States also should ensure that they are complying with any other relevant State or Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. ^{*}

^{*} For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office. </sup>

Source: 10/24/200610/24/2006

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)* section 106(b)(2); *Social Security Act* section 471(c)

Child Welfare Policy Manual

2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

1 Q: Section 106(b)(2)(B)(x) of CAPTA requires States to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?

A: A "near fatality" is defined under section 106 (b)(4)(A) as "...an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical", this would be considered a "near fatality" under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - 106(b)(4)(A)

2 Q: The requirement for public disclosure states that "findings or information" about a case must be disclosed. Does this mean that States have the option to disclose either the findings of the case, or information which may be general in nature and address such things as practice issues rather than provide case-specific information?

(Deleted 09/14/2012)

3 Q: One State has child fatality review panels that are charged with the review and evaluation of child fatalities and near fatalities in the State. In this process, they evaluate the extent to which the agency is effectively discharging its child protection responsibilities. The child fatality review panels publish an annual report that includes information, findings and recommendations on each case, and this report is made public. Would this process meet the requirement in section 106(b)(2)(B)(x) for public disclosure of findings or information about cases of child abuse or neglect that result in child fatality or near fatality?

A: If the minimum information that must be released per section 2.1A.4, Q/A #8 of the CWPM is included in the report, this process would meet the CAPTA requirement.

Child Welfare Policy Manual

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12 ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(x)

4 Q: Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to provide an assurance that it will have provisions which "allow" for public disclosure when child abuse or neglect results in a child fatality or near fatality. Yet section 2.1A.1, Q/A #1 of the Child Welfare Policy Manual (CWPM) "requires" public disclosure in such cases. Can you explain the requirements for this State plan assurance?

A: "Provisions which allow for public disclosure" in section 106(b)(2)(B)(x) of CAPTA means that the State must have procedures or provisions that allow the public to access information when child abuse or neglect results in a child fatality or near fatality. The State does not have discretion in whether to allow the public access to the child fatality or near fatality information; rather, the public has the discretion as to whether to access the information. In other words, the State is not required to provide the information to the public unless requested. However, once a request has been made, the State must provide the information in accordance with section 2.1A.4, Q/A #8 of the CWPM.

Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Child Welfare Policy Manual

Source: updated 9/27/11; 9/12/12updated 9/27/11; 9/12/12

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)* - section 106;
Child Welfare Policy Manual - sections 2.1A.1 Q/A #1, 2 & 4 and 2.1A.4 Q/A #2

- 5 **Q:** Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that results in a child's fatality or near fatality. Is the State required to turn over all of the information in the entire case record, when requested?
- A:** No. The State is not required to release all of the information in the entire case record. Rather, the State must provide for the disclosure of findings and information in accordance with section 2.1A.4, Q/A #8 of the CWPM. As such, the State may determine its procedures in accordance with these parameters, and can release the full investigation; a summary of the investigation; or a statement of findings and information about the incident among other options. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: updated 9/27/11; 9/12/12updated 9/27/11; 9/12/12

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)* - section 106;

Child Welfare Policy Manual

6 Q: When child abuse or neglect results in a child fatality or near fatality, is the State required to disclose to the public personal information about the child, including name, date of birth and date of death?

A: As required by CWPM section 2.1A.4 Q/A #8, the State is required to provide the child's age and gender when child abuse or neglect results in a child's death or near fatality; disclosure of the child's name, date of birth, date of death or other personal information is not a Federal requirement. However, a State is not prohibited by CAPTA from having procedures or policies that release such information.

Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: updated 9/27/11; 9/12/12updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

Child Welfare Policy Manual

7 *Q:* In a case of child abuse or neglect that results in a child fatality or near fatality, is the State required to provide information on the child's siblings, or other children in the household?

A: Generally no. The information about another child in the household who is not a fatality or near fatality victim is not subject to the CAPTA public disclosure requirement unless this information is pertinent to the child abuse or neglect that led to the fatality or near fatality. This information in fact may be protected by the confidentiality requirements applicable to titles IV-B/IV-E of the Social Security Act. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: 10/24/2006; updated 9/12/12 10/24/2006; updated 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

Child Welfare Policy Manual

8 **Q:** Section 106(b)(2)(B)(x) of CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. Under this provision, is there information that a state must disclose to the public?

A: Yes. States must develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family.

Source: 09/12/1209/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5106a et seq.) section 106

Child Welfare Policy Manual

2.1B CAPTA, Assurances and Requirements, Appeals

1 Q: Please explain the requirements in the Child Abuse Prevention and Treatment Act (CAPTA) for appealing findings of child abuse or neglect.

A: States are required to have in place an appeals process by which an individual who is officially found to have committed child abuse or neglect can appeal such a finding. States have some flexibility in determining the type of appeals process that best meets their needs. For example, the appeals process can be established through the courts, through some other external appeals process, or through an internal appeals process.

The appeals process, however, must meet the following minimum conditions in order to satisfy the CAPTA requirements:

- 1) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.
- 2) The office or individual(s) hearing such appeals cannot be involved in any other stage of the case.
- 3) The office or individual(s) established to hear such appeals must have the authority to overturn a previous finding of child abuse or neglect.
- 4) Individuals must be given written notification of their right to appeal, and the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

Source: ACYF-CB-PI-98-08 (6/29/98); updated 9/27/11 ACYF-CB-PI-98-08 (6/29/98); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)

Child Welfare Policy Manual

2 **Q:** To whom does the appeals process under 106(b)(2)(B)(xv)(II) apply?

A: CAPTA requires States to establish provisions, procedures and mechanisms by which individuals who disagree with an official finding of abuse and neglect can appeal such finding. We understand this provision to apply to the perpetrator; however, individuals with standing under State law are not precluded from participating in the appeals process should such individuals disagree with a finding of abuse or neglect.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(II)

3 **Q:** The Department has stated that an appeals process under CAPTA should include steps to assure that individuals with appeal rights receive timely notification of the right to appeal a finding of child abuse and neglect. What is considered timely notification (e.g., at the time individuals come to the attention of the agency or after the finding of abuse and/or neglect)?

A: While there is nothing in Federal statute or regulation which defines "timely notification" for this purpose, we believe that the term is directly related to an official finding of abuse or neglect. Therefore, States should implement processes and procedures to assure that individuals are notified of their right to appeal upon a final finding of abuse or neglect.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97) ; updated 9/27/11ACYF-NCCAN-PIQ-97-03 (9/26/97) ; updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(II)

Child Welfare Policy Manual

4 Q: Must States set up an administrative appeals process if they do not maintain a central registry?

A: Yes. Pursuant to section 106 (b)(2)(B)(xv)(II) of the Child Abuse Prevention and Treatment Act (CAPTA), States must have a process to hear appeals from individuals who disagree with an official finding of child abuse or neglect. There is nothing in the statutory language or legislative history that indicates that this requirement is limited to only those States with central registries. Additionally, in order for an appeals process to be complete, it must include steps to assure that individuals with such rights receive timely notification.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(II)

2.1C CAPTA, Assurances and Requirements, Expedited Termination of Parental Rights

1 Q: The provision at section 106(b)(2)(B)(xv)(I) of CAPTA requires that States provide for expedited termination of parental rights for abandoned infants. What is considered "expedited" for this purpose?

A: The intent of this provision was to assure that infants who have been abandoned by their parents do not end up in "foster care limbo" (Congressional Record - House, September 25, 1996, p. H11148). To meet this requirement, States are expected to establish procedures to assure that termination of parental rights for abandoned infants is handled more expeditiously than terminations would normally be handled in the State. One approach might be to prescribe a specific period of time by which a termination must be initiated for abandoned infants. The American Bar Association's Center on Children and the Law published a monograph in 1996 entitled, "Early Termination of Parental Rights: Developing Appropriate Statutory Grounds", which may be of assistance to States as they implement this provision of CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(I)

Child Welfare Policy Manual

2.1D CAPTA, Assurances and Requirements, Guardian Ad Litem

1 Q: What is the meaning of the requirement in section 106(b)(2)(B)(xiii) of CAPTA for guardians ad litem, including the requirement that they obtain a first-hand understanding of the situation and needs of the child?

A: In order to provide States with more flexibility in appointing a guardian ad litem, the CAPTA clarifies that such guardian does not have to be an attorney, but also may be a court-appointed special advocate for the child. The Congress (in 1996) noted that, under the current system, there are more and more cases where an appointed guardian ad litem has no contact with the child and makes uninformed recommendations to the court. Therefore, language was added to clarify that the role of such individuals include obtaining a first-hand understanding of the situation in order to make an informed recommendation to the court (Congressional Record - House, September 25, 1996, p. H11149). In addition, Congress added language to this provision in 2003 via Public Law 108-36 to require that States train guardians ad litem appropriate to their role in representing children. Public law 111-320 (2010) further amended section 106(b)(2)(B)(xiii) to require that the training include early childhood, child, and adolescent development.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xiii)

Child Welfare Policy Manual

2 Q: The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(B)(xiii) requires that attorneys or court-appointed special advocates who are appointed as guardians ad litem (GAL) receive training appropriate to their role. What are the minimum conditions for this requirement?

A: The statute is clear that the State must have provisions and procedures in place to assure that every child who is the subject of an abuse or neglect proceeding is appointed a GAL, and that the GAL receive training appropriate to the role, including training that addresses early childhood, child, and adolescent development, prior to being appointed to represent the child in the proceeding regardless of whether the GAL is an attorney or court-appointed special advocate. The specifics of a State's plan for training its guardians ad litem may vary, depending upon individual State circumstances and needs. So long as the GAL is trained before s/he is appointed to represent a child, the CAPTA requirement will be met.

Source: 05/02/06; updated 12/9/11 05/02/06; updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(ix)

2.1E CAPTA, Assurances and Requirements, Reunification

1 Q: If a State does not "require" reunification, in general, must it do anything further regarding the mandate in section 106(b)(2)(B)(xvi) which requires that provisions, procedures, and mechanisms be implemented to assure that the State does not require reunification with a parent who has been convicted of murder, manslaughter, felonious assault or sexual abuse of the surviving child or another child of the parent, or who is required to register with a sex offender registry?

A: Yes. To comply with this section of CAPTA, States must have provisions, procedures, and mechanisms in place which address the fact that reunification is not required in the circumstances enumerated under 106(b)(2)(B)(xvi).

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xvi)

Child Welfare Policy Manual

2 **Q:** Section 106(b)(B)(xvi) of CAPTA requires that provisions, procedures, and mechanisms be implemented to assure that a State does not require reunification with a parent who has been convicted of certain felonious acts, a parent who has been convicted of sexual abuse against the surviving child or another child of the parent, or a parent who is required to register with a sex offender registry. On the other hand, the Indian Child Welfare Act (ICWA) requires that "any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful" (25 U.S.C §1912(d)). Does a conflict exist between the two statutes?

A: No. There is no conflict between the CAPTA provision and the ICWA requirement noted above. The CAPTA provision does not prohibit States from making reasonable efforts to reunify families as required under ICWA (as well as under title IV-E); it merely ensures that States not require reunification under certain circumstances. Therefore, it does not conflict with the ICWA requirement regarding efforts to prevent the breakup of Indian families.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05; 12/9/11 ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106 (b)(2)(B)(xvi); Indian Child Welfare Act (25 U.S.C §1912(d))

Child Welfare Policy Manual

3 Q: Does section 106(b)(2)(B)(xvii) of CAPTA mean that children cannot be reunified with a parent who has committed the specific crimes therein or must be registered with a sex offender registry pursuant to section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006?

A: No. This provision is not a prohibition against reunification, but rather assures that reunification is not required in cases where the parent has committed the crimes listed in 106(b)(2)(B)(xvii) or had to register with the Adam Walsh sex offender registry. The decision as to whether to reunify or seek termination of parental rights is within the sole discretion of the State and is determined on a case-by-case basis.

Source: ACYF-NCCAN-PIQ 97-01 (3/4/97); updated 2/3/05; 12/9/11ACYF-NCCAN-PIQ 97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xvii)

2.1F CAPTA, Assurances and Requirements, Infants Affected by Illegal Substance Abuse

1 Q: We understand section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act (CAPTA) to mean that health care providers must notify Child Protective Services (CPS) of all infants born and identified as affected by illegal substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. We do not believe that this provision requires the health care provider to refer such children and families to CPS as a report of suspected child abuse or neglect. Is this interpretation accurate?

A: Yes, this interpretation is accurate. CAPTA requires that the health care provider must notify CPS of *all* infants born and identified as affected by illegal substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. Such notification need not be in the form of a report of suspected child abuse or neglect. It is ultimately the responsibility of CPS staff to assess the level of risk to the child and other children in the family and determine whether the circumstance constitutes child abuse or neglect under State law. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA requirement.

Source: 05/02/06; updated 12/9/1105/02/06; updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section

Child Welfare Policy Manual

106(b)(2)(B)(ii)

2 Q: If drug-exposure is not defined as child abuse or neglect in the State's reporting statute, are health care providers still required to "notify" child protective services under section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

A: Yes. The State is required to have policies and procedures to implement section 106(b)(2)(B)(ii) of CAPTA regardless of how child abuse and neglect is defined in the State. Health care providers must notify CPS of all infants born and identified as affected by illegal substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: 05/02/06; updated 12/9/11 05/02/06; updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(ii).

3 Q: The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(A)(ii) requires States to adopt policies and procedures to address the needs of infants identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. Does this requirement include an infant who is affected by prenatal exposure to alcohol?

A: No. The inclusion of an infant's prenatal exposure to alcohol was considered but excluded from the requirement by Congress. Specifically, the House bill included "fetal alcohol syndrome" in the provision, but the Senate bill did not. Rather, the original Senate language which does not mention prenatal exposure to alcohol was finally adopted in conference and enacted into law. The Senate Report (S. Rpt. 108-12) notes: "While the committee felt constrained, because of limited ability to detect and diagnose it at birth, not to include prenatal exposure to alcohol in this requirement, the Committee remains concerned about the affects [sic] of alcohol on infants and a possible later diagnosis of fetal alcohol syndrome."

The Senate Report further stated that "[t]he committee wants to be clear that it is not intending to pre-empt State law regarding what constitutes child abuse or requirements for prosecution, nor does the committee intend to signal that States should no longer investigate cases

Child Welfare Policy Manual

involving prenatal exposure to alcohol." Therefore, although the inclusion of infants who are born with prenatal exposure to alcohol is not required by the CAPTA provision, neither is it prohibited.

Source: 05/02/0605/02/06

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(A)(ii)*

2.1F.1 CAPTA, Assurances and Requirements, Infants Affected by Illegal Substance Abuse, Plan of Safe Care

1 Q: Which agency is responsible for developing the plan of safe care and what is a plan of safe care, as required by section 106(b)(2)(B)(iii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

A: The statute does not specify which agency or entity (such as hospitals or community-based organizations) must develop the plan of safe care; therefore, the State may determine which agency will develop it. The plan of safe care should address the needs of the child as well as those of the parent(s), as appropriate, and assure that appropriate services are provided to ensure the infant's safety. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11updated 9/27/11

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(iii).*

Child Welfare Policy Manual

2.1G CAPTA, Assurances and Requirements, Triage

1 Q: Section 106(b)(2)(B)(v) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary protective service. At what point must the State Child Protective Services (CPS) agency refer a child at the point there is a report of abuse or neglect on a child; at the point the child is screened out of CPS; or after the results of the investigation determine that there is no imminent risk of harm to the child?

A: The statute does not prescribe a point in time in which a referral to a community organization must be made. Thus, the State has the flexibility to determine appropriate procedures for when and how to refer a child it determines is not at imminent risk to a community organization or voluntary protective services provider. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: 05/02/06; updated 12/9/11 05/02/06; updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(v); Sections 1171 through 1179 of the Social Security Act; and 45 CFR Parts 160 and 164, Subpart E

2 Q: What is the expected scope of public outreach the citizen review panels are supposed to undertake per the Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(c)(4)(C)? In one State, one panel is interested in surveying foster parents while another is interested in surveying some of their local community service providers. Is either of these too narrow?

A: At a minimum, we expect the panels to reach out to the immediate community. In doing so, individual panels have discretion as to whom in the community to survey, depending on the issues for which the panel feels it needs input in order to meet its obligation to evaluate the extent to which State and local CPS agencies are effectively discharging their child protection responsibilities as required by section 106(c)(4)(C) of CAPTA. For example, one panel may evaluate issues related to recruiting and retaining foster parents. In that case, it would be appropriate for the panel to survey foster parents. Surveying foster parents, however, would not necessarily help the panel meet its obligations if the issue of concern was the high number of child deaths in the State. The public outreach should be tailored to meet the needs of the panel in achieving its goals.

Child Welfare Policy Manual

Source: 05/02/0605/02/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(c)(4)(C)

2.1H CAPTA, Assurances and Requirements, Notification of Allegations

1 Q: The provision at section 106(b)(2)(B)(xviii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have provisions or procedures to advise the individual subject to a child abuse or neglect investigation of the complaints or allegations made against him or her at the time of the initial contact. Would a State be out of compliance with CAPTA if it implemented a rule to specify that "initial contact" in the CAPTA provision at section 106(b)(2)(B)(xviii) meant "face-to-face" contact only?

A: Yes. The CAPTA provision requires that the State notify the individual of the complaints or allegations made against him or her at the initial time of contact regardless of how that contact is made. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11 updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(xviii)

2 Q: The provision at section 106(b)(2)(B)(xviii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have provisions or procedures to advise the individual subject to a child abuse or neglect investigation of the complaints or allegations made against him or her at the time of the initial contact. One State employs an alternative response system, which is a non-adversarial approach to assess low- and moderate-risk level reports of child abuse and neglect. Does the Federal requirement at section 106(b)(2)(B)(xviii) of CAPTA apply only to child maltreatment investigations or does it also apply to child maltreatment alternative response assessments?

A: The State must advise the individual subject to a child abuse or neglect investigation of the complaint or allegation against him/her whether the State is investigating the complaint through a formal investigation or an alternate response system. The method by which the State assesses the complaint against a person is not the issue. There may be Federal confidentiality

Child Welfare Policy Manual

restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11 updated 9/27/11

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xviii)*

- 3 **Q:** The provision at section 106(b)(2)(B)(xviii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have provisions or procedures to advise the individual subject to a child abuse or neglect investigation of the complaints or allegations made against him or her at the time of the initial contact. Would a State be out of compliance with CAPTA if it provided notification only to parents who have an allegation of child abuse or neglect?

- A:** Yes. The provision requires notification to "an individual subject to a child abuse or neglect investigation" and does not limit this notification to parents only.

Source: updated 9/27/11 updated 9/27/11

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(xviii)*

2.11 CAPTA, Assurances and Requirements, Referrals to IDEA, Part C

- 1 **Q:** Must a State refer *every* child under the age of three in a substantiated case of child abuse or neglect to the Individuals with Disabilities Education Act (IDEA) Part C agency, or may the State first screen these children to determine whether such a referral is needed?

- A:** The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(B)(xxi) requires that States have provisions and procedures for the referral of children under the age of three who are involved in substantiated cases of child abuse or neglect to early intervention services funded by Part C of the Individual with Disabilities Act (IDEA). Part C of the IDEA, which was reauthorized on December 3, 2004 by Public Law 108-446, contains a provision very similar to the one in CAPTA. The Conference Report accompanying the IDEA legislation indicates that the conferees did not intend the IDEA provision to require every child under the age of three who is involved in a substantiated case of child abuse or neglect to receive an evaluation. Rather, the intention was that such children be screened to determine whether a referral to early intervention services is warranted (House Report 108-779, p. 241).

Child Welfare Policy Manual

CAPTA does not specifically require that *every* child under the age of three who is involved in a substantiated case of child abuse or neglect *must* be referred to Part C services. Therefore, States have the discretion as to whether to refer every such child under the age of three for early intervention services, or to first employ a screening process to determine whether a referral is needed. We believe that this is consistent with the purpose of the provision, which is to assure that all children who have a substantiated case of child abuse or neglect will be given special attention to determine whether they need early intervention services and to assure referral when such services are warranted.

It is up to the State to determine how children referenced in section 106(b)(2)(B)(xxi) of CAPTA will be screened and, if appropriate, referred to the Part C early intervention program in the State. The IDEA regulations at 34 CFR 303.321(d) provide procedures for use by *primary referral sources* for referring a child to a Part C agency for evaluation and assessment or appropriate services. Under 34 CFR 303.321(d)(3) *primary referral sources* include hospitals, physicians and social service agencies, which can include the Child Protective Services (CPS) agency, as well as other sources. Some State CPS agencies are using other primary referral sources to assist in screening a child (after substantiation), while other State IDEA Part C programs are working with CPS agencies and training CPS social workers to conduct appropriate screenings. Both approaches meet the CAPTA requirements. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11 updated 9/27/11

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)* section 106(b)(2)(B)(xxi); *Public Law 108-446; House Report 108-779, p. 241; 34 CFR 303.321(d).*

2 Q: Can the provision at section 106(b)(2)(B)(xxi) of the Child Abuse Prevention and Treatment Act (CAPTA), which requires referral of a child under the age of three who is involved in a substantiated case of child abuse or neglect to early intervention services, be read to mean that children who are wards of the State must be so referred?

A: No. The statute specifically requires the State to refer children under the age of three who are involved in *substantiated* cases of child abuse and neglect to early intervention services funded under Part C of the Individuals with Disabilities Education Act (IDEA). Therefore, since many children who are involved in substantiated cases of child abuse and neglect never come into foster care, we cannot narrow the requirement to children who are wards of the State. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Child Welfare Policy Manual

Source: updated 9/27/11 updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(xxi)

- 3 **Q:** Does the "child" as mentioned in section 106(b)(2)(B)(xxi) of the Child Abuse Prevention and Treatment Act (CAPTA) include only those children under the age of three who are involved in a substantiated case of child abuse or neglect or does this include any child in the family or household who is under the age of three?

A: CAPTA requires the State to refer any child under the age of three who is the *subject* of a substantiated case of child abuse or neglect to early intervention services under Part C of the Individuals with Disabilities Education Act. The State is not required to refer other children in the household under the CAPTA provision. However, we encourage States to refer all children who are suspected of having a disability and warranting a referral to early intervention services, taking into consideration Federal confidentiality restrictions when implementing this CAPTA provision.

Source: updated 9/27/11 updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(xxi).

2.1J CAPTA, Assurances and Requirements, Criminal Background Checks

- 1 **Q:** Are fingerprints required as part of the criminal background check requirement in section 106(b)(2)(B)(xxii) of CAPTA?

A: Yes. Public Law 111-320 amended section 106(b)(2)(B)(xxii) of CAPTA in 2010 to require that States have provisions and procedures that require criminal background checks for prospective foster and adoptive parents and other adults residing in the household that meet the title IV-E criminal background check requirements. The title IV-E requirements in section 471(a)(20) of the Social Security Act require fingerprint-based criminal record checks of national crime information databases.

Child Welfare Policy Manual

Source: 05/02/06; updated 12/9/11 05/02/06; updated 12/9/11

Reference: Social Security Act section 471(a)(20); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(b)(2)(B)(xxii)

- 2 **Q:** Does the requirement at section 106(b)(2)(A)(xxii) of the Child Abuse Prevention and Treatment Act (CAPTA) for criminal background checks for prospective foster and adoptive parents and other adults living in the household apply if no title IV-E foster care or adoption assistance payments are made?

(Deleted 02/09/2012)

2.2 CAPTA, Citizen Review Panels

- 1 **Q:** How will States know how many citizen review panels they must establish to meet the requirements of section 106(c)(1)(A)-(B) since that number is dependent upon the amount of funds received by the State under the Community-Based Grants for the Prevention of Child Abuse and Neglect Program under Title II of CAPTA?

- A:** CAPTA requires that States establish a minimum of three citizen review panels. The only exception to this requirement is for States that receive the minimum allotment of \$175,000 under Title II of CAPTA, and they are required to establish no less than one citizen review panel.

The Department has notified States in writing regarding whether one or three panels will be required in each State.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)(1)(A)-(B) and Title II

Child Welfare Policy Manual

2 **Q:** Do States have the flexibility to determine how to implement the citizen review panels requirement in section 106(b)(2)(B)(xiv) of CAPTA?

A: Yes. States have the flexibility to implement the citizen review panel requirement in ways that best meet their needs, so long as the panels meet the requirements set forth under section 106 (c) of CAPTA.

States should pay particular note to section 106 (c)(2) of CAPTA which specifies the requirements for membership of the panel. We encourage the States to give special attention to the qualifications of the panelists to review complex cases of child maltreatment, including a balance among children's attorneys, child advocates and CASA volunteers who are familiar with the difficulties of the child protection system.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(xiv) and (c)(2)

3 **Q:** What are the functions that citizen review panels must perform?

A: Pursuant to sections 106(c)(4)(A)(i) and (ii) of the Child Abuse Prevention and Treatment Act (CAPTA), each panel must evaluate the extent to which the State is fulfilling its child protection responsibilities in accordance with its CAPTA State plan by: (1) examining the policies, procedures and practices of State and local child protection agencies, and (2) reviewing specific cases, where appropriate. In addition, consistent with section 106(c)(4)(A)(iii) of CAPTA, a panel may examine other criteria that it considers important to ensure the protection of children, including the extent to which the State and local CPS system is coordinated with the title IV-E foster care and adoption assistance programs of the Social Security Act. This provision also authorizes the panels to review the child fatalities and near fatalities in the State.

In order to assess the impact of current procedures and practices upon children and families in the community and fulfill the above requirements, citizen review panels must provide for public outreach and comment (section 106(c)(4)(C) of CAPTA). Finally, each panel must prepare an annual report that summarizes the activities of the panel and makes recommendations to improve the CPS system at the State and local levels, and submit it to the State and the public (section 106(c)(6) of CAPTA).

Child Welfare Policy Manual

Source: ACYF-CB-PI-99-09 (6/2/99); updated 3/22/06ACYF-CB-PI-99-09 (6/2/99); updated 3/22/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)

4 Q: Section 106 (c)(5) of CAPTA requires States to provide citizen review panels with access to information on cases that the panel wants to review "if such information is necessary for the panel to carry out its functions". Who determines what confidential information is necessary for these functions?

A: The Congress intended that citizen review panels be established to evaluate the extent to which States are meeting the goals of protecting children and their responsibilities related to the State plan. In carrying out these responsibilities, it is important for the review panels to have access to confidential information, as necessary, to assist in their duties. The intent of section 106 (c)(5) was to direct States to provide the review panels with information that the panel determines is necessary to carry out these functions (Congressional Record - House, September 25, 1996, p. H11149).

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)(5)

5 Q: Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

A: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that already have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

Child Welfare Policy Manual

Source: ACYF-BC-PI-98-01 (1/7/98); updated 9/27/11 ACYF-BC-PI-98-01 (1/7/98); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)(4)(B)

6 Q: Must a State include families who are involved with the Child Protective Services (CPS) agency as members of its citizen review panels?

A: The provision at section 106(c)(2) of the Child Abuse Prevention and Treatment Act requires that members of the citizen review panels be broadly representative of the community in which the panel is established and include members with expertise in the prevention and treatment of child abuse and neglect. There is no requirement that families involved with CPS be part of the citizen review panel.

Source: 05/02/0605/02/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(c)(2)

2.3 CAPTA, Definitions

1 Q: We find the "rape" and "statutory rape" language in the definition of sexual abuse found at section 111 (4)(B) of CAPTA confusing, especially within the context of the general definition of child abuse and neglect at section 3 (2). Please clarify.

A: The provision at section 3 (2) defines child abuse and neglect as "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Section 111 (4)(B) goes on to say that the term sexual abuse includes "the rape, and in the cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children." We understand section 111 (4)(B) to define the circumstances in which a parent or caretaker, although not the perpetrator, is chargeable with child abuse and neglect because of sexual acts committed by a third party.

For the purposes of CAPTA, child abuse and neglect, by definition, is limited to a recent act or failure to act on the part of a parent or caretaker. Thus, if a child is raped due to a failure to act

Child Welfare Policy Manual

on the part of a parent or caretaker, such failure to act would be considered child abuse by the parent or caretaker under CAPTA, regardless of the identity of the perpetrator. In addition, the definition at section 111 (4)(B) means that action or failure to act by a parent or caretaker that results in statutory rape by another caretaker or family member is considered to be sexual abuse.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3 and 111

2 Q: Definitions are found in sections 106(b)(4), as well as in sections 3 and 111. What is the difference between the definitions found in these sections?

A: The differences in the definitions found in these sections is in what they govern. The definitions of "near fatality" and "serious bodily injury" in sections 106 (b)(4) of CAPTA refer to those specific terms as used in subsection (b) of section 106 of CAPTA. For instance, whenever the terms "near fatality" or "serious bodily injury" are used in subsection (b), the definitions found in section 106(b)(4) would apply.

Section 111, on the other hand, provides the broader definitions of "sexual abuse" and "infant or toddler with a disability," which are used for all other purposes of Title I of CAPTA.

The definitions in section 3 provide still broader definitions such as "child abuse and neglect" and "child with a disability," which are used throughout all of CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106(b) and 111

Child Welfare Policy Manual

- 3 **Q:** Section 106(b)(2)(B)(x) of CAPTA requires a State to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?
- A:** A "near fatality" is defined under section 106 (b)(4)(A) as "an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical," this would be considered a "near fatality" under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11 ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(x) and (b)(4)(A)